

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	:	
	:	
Annual formula rate update and revenue	:	No. 15-0287
requirement reconciliation under	:	
Section 16-108.5 of the Public Utilities Act.	:	

REPLY BRIEF OF COMMONWEALTH EDISON COMPANY

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REPLY BRIEF OF COMMONWEALTH EDISON COMPANY

Commonwealth Edison Company (“ComEd”), by its counsel, in accordance with the Rules of Practice of the Illinois Commerce Commission (the “Commission” or “ICC”) and the scheduling order of the Administrative Law Judges, submits this Reply Brief.

I. INTRODUCTION/STATEMENT OF THE CASE

ComEd has already addressed the majority of Staff and Intervenors’ arguments in its Initial Brief, and ComEd will not reiterate those points here. ComEd maintains that in regard to the contested issues in this case, the positions advocated by Staff and Intervenors are contrary to the evidence and the applicable law. For the reasons set forth below, as well as those ComEd elaborated on in its Initial Brief, the Commission should accept ComEd’s positions on: 1) calculation of depreciation resulting in accumulated deferred income taxes (“ADIT”) related to plant additions; 2) ADIT related to bad debt; 3) ComEd’s Materials and Supplies (“M&S”) balance; 4) short term incentive compensation program expenses associated with distinguished performance by ComEd employees; 5) ComEd’s 401(k) Employee Savings Plan matching program; 6) outside services expenses associated with smart meter customer outreach and education; and 7) certain industry association dues.¹

¹ Intervenors have confirmed in their Initial Briefs that calculation of interest on ComEd’s reconciliation balance is no longer a contested issue in this case. AG/City Init. Br. at 22; CUB/IEEC Init. Br. at 3-4.

II. OVERALL REVENUE REQUIREMENT

- A. 2016 Initial Rate Year Revenue Requirement**
- B. 2014 Reconciliation Adjustment**
- C. ROE Collar and ROE Penalty Calculation**
- D. 2016 Rate Year Net Revenue Requirement**

III. SCOPE OF THIS PROCEEDING

- A. Changes to the Structure or Protocols of the Performance-Based Formula Rate**
- B. The Definition of Rate Year and the Reconciliation Cycle**
- C. Original Cost Finding**
- D. Issues Pending on Appeal**

IV. RATE BASE

- A. Overview**
 - 1. 2014 Reconciliation Rate Base**
 - 2. 2016 Initial Rate Year Rate Base**
- B. Potentially Uncontested Issues**
 - 1. Plant in Service**
 - a. Distribution Plant**
 - b. General and Intangible Plant**
 - 2. Regulatory Assets and Liabilities**
 - 3. Deferred Debits**
 - 4. Other Deferred Charges**
 - 5. Accumulated Provisions for Depreciation and Amortization**
 - 6. Accumulated Miscellaneous Operating Provisions**
 - 7. Asset Retirement Obligation**
 - 8. Customer Advances**

9. Customer Deposits

10. Cash Working Capital

Although this issue is undisputed, ComEd noticed a discrepancy in Staff's calculation of cash working capital. This calculation should include depreciation on projected plant additions and the correct figure for Staff's calculation is \$522,804,000. *Compare* Staff Init. Br., App. A, Sched. 10, page 2, lines 3 and 20 (showing depreciation expense – without additional depreciation expense related to projected plant additions – of \$472,987,000; this is the figure Staff used) *with* Staff Init. Br., App. A, Sched. 1, col. (i), line 10 plus line 12 (showing depreciation expense – with additional depreciation expense related to projected plant additions – of \$522,804,000; this is the correct figure). It is ComEd's understanding that Staff will confirm this in its Reply Brief.

11. Construction Work in Progress

C. Potentially Contested Issues

1. Accumulated Deferred Income Taxes

a. ADIT Related to Plant Additions

This issue concerns the depreciation balance used to calculate the ADIT related to ComEd's projected 2015 plant additions. No party disputes that ADIT related to plant additions is properly included in rate base or how that ADIT factors into the rate formula. CUB/IIEC simply claim that ComEd "failed to correctly calculate" the amount of that ADIT. CUB/IIEC Init. Br. at 4. No other brief makes that claim, and Staff affirmatively "recommends that the Commission reject this proposal." Staff Init. Br. at 7. Much of CUB/IIEC's argument has already been addressed in ComEd's Initial Brief, and this adjustment should be rejected.

First, contrary to the CUB/IIEC claim, ComEd calculated the ADIT balance as the Commission has directed. Brinkman Reb., ComEd Ex. 8.0R, 25:537-540. The Commission

decided how book depreciation on projected plant additions should be calculated in its Order in Docket No. 14-0316. Brinkman Reb., ComEd Ex. 8.0R, 25:524-528; *Commonwealth Edison Co.*, ICC Docket No. 14-0316, Final Order (Nov. 25, 2014) (“14-0316 Order”) at 26-27. It determined that “the 2014 depreciation rates from ComEd’s updated depreciation rate study” should be used “to calculate depreciation expense *as well as ADIT for the filing year.*” 14-0316 Order at 27 (emphasis added). ComEd followed that direction, as to both depreciation and the resulting ADIT. The CUB/IEEC argument is premised on rejecting it. As Staff observes, “[t]he Commission previously rejected the issue raised by Intervenors in its Order in Docket No. 14-0316.” Staff Init. Br. at 7 (citations omitted). While CUB/IEEC claim they made no ADIT argument last year (CUB/IEEC Init. Br. at 6), the calculation of depreciation on projected plant additions was fully litigated and decided. Brinkman Reb., ComEd Ex. 8.0R, 26:543-555; 14-0316 Order at 26. Contesting that depreciation calculation is the basis of the CUB/IEEC ADIT argument.

Nor can CUB/IEEC justify re-litigating that depreciation issue. As Staff witness Kahle testified, CUB/IEEC cannot show “that any circumstance has changed to warrant adopting a different method for determining the amount of depreciation on projected plant additions to include in the calculation of ADIT.” Kahle Reb., Staff Ex. 5.0, 7:150-152; *see also* Staff Init. Br. at 7. Commission decisions on litigated issues, especially in the context of a formula rate structure expressly designed to promote rate stability, should not be altered without good reason. Brinkman Sur., ComEd Ex. 11.0R, 10:196-199. “Mr. Gorman's proposal now reopens that calculation and adds further complications, without any corresponding benefit to customers or the formula ratemaking process.” Brinkman Reb., ComEd Ex. 8.0R, 26:561-27:563.

CUB/IIEC also claim that calculating depreciation as directed by the Commission will cause an “over-recovery” of costs that will “require[] resolution in some future reconciliation case.” CUB/IIEC Init. Br. at 5. They err. The depreciation was accurately calculated, as directed by the Commission and, in any event, ADIT on plant additions affects only the Initial Rate Year Revenue Requirement, so “customers are fully protected by the reconciliation process” Brinkman Sur., ComEd Ex. 11.0R, 10:199-201; *see also* Brinkman Dir., ComEd Ex. 1.0 CORR., 9:176-179. There is no risk whatsoever of over-recovery.

Finally, while CUB/IIEC argue that reliance on the reconciliation process, should be minimized regardless of its effectiveness in protecting customers, their proposal will likely *increase*, not reduce, the size of the future reconciliation required. Under EIMA, projected Initial Rate Year Revenue Requirements tend to understate actual costs for obvious reasons (*e.g.*, the included operating expense is from two years earlier and the capital investment excludes the entire rate year itself). *See* Brinkman Dir., ComEd Ex. 1.0 CORR., 8:165-9:172 (describing and depicting the lag). By including an ADIT balance less than that supported by the Commission-approved depreciation, the CUB/IIEC proposal will *enlarge* the gap between ComEd’s actual and projected 2016 costs and push a *greater* share of ComEd’s actual 2016 costs into the reconciliation process. Brinkman Reb., ComEd Ex. 8.0R, 25:524-536. If the Commission strives to minimize the size of the reconciliation balance, as it has in the past (*e.g.*, 14-0316 Order at 26), that is yet another reason to reject the CUB/IIEC proposal.

b. ADIT Related to Bad Debt

CUB/IIEC and AG/City argue that ComEd’s rate base should exclude ADIT related to bad debt, at least unless it is reduced by an allowance for bad debt recorded in Account 144. *See* CUB/IIEC Init. Br. at 6-7; AG/City Init. Br. at 10-12. Much of their argument has already been addressed in ComEd’s Initial Brief. Their argument – which has never been accepted by the

Commission (Tr. at 51:15-52:1 (Brinkman, Aug. 27, 2015)) – relies on inaccurate over-generalizations about ADIT and an inaccurate portrayal of what the ADIT on bad debt and Account 144 actually represent. ComEd Init. Br. at 22-23. ComEd has accounted for this ADIT as directed by the Commission. Brinkman Reb., ComEd Ex. 8.0R, 23:476-493.

ADIT on bad debt represents a prepaid tax. Brinkman Sur., ComEd Ex. 11.0R, 9:173-181; Tr. at 52:16-22 (Brinkman, Aug. 27, 2015). It is a real investment by shareholders that must be included in rate base. Brinkman Sur., ComEd Ex. 11.0R, 9:174-10:187. In contrast, the balance in Account 144 is a book entry that represents no offsetting source of funds. It does not lessen or offset the real investment ComEd shareholders make in the prepaid tax, or reduce ComEd’s need to finance it. It has never been (Tr. at 51:15-52:1 (Brinkman, Aug. 27, 2015)) and should not be deducted from rate base.² *Id.* at 51:4-14. Account 144 simply recognizes delayed receivables which, if anything, relate to cash working capital, not rate base.

Pointing to other types of ADIT created and funded in other ways, CUB/IIEC argue that “[i]n general, the treatment of ADIT balances that relate to specific asset and liabilities should ‘follow’ the rate base treatment of the corresponding assets and liabilities.” CUB/IIEC Init. Br. at 7. AG/City make a similar, if lengthier, claim that “general principles” of GAAP provide a one-size-fits-all all directive concerning the proper *ratemaking* treatment of this ADIT. AG/City Init. Br. at 8-10. Neither is accurate. There are many types of ADIT that arise in different ways and “every ADIT is different.” Tr. at 49:13 (Brinkman, Aug. 27, 2015). Correctly reflecting ADIT balances in ratemaking is not about any blanket rule or accounting convention, but requires consideration of what the ADIT represents and how it is funded. And, “while GAAP

² ComEd notes that AG/City mischaracterize Account 144 as a liability balance. It is not. It reflects no obligation or debt of ComEd to anyone. It is simply a reduction to the book value of accounts receivable. See 18 CFR Part 101 (classifying Account 144 as a credit asset account). See generally <http://www.investopedia.com/terms/a/allowancefordoubtfulaccounts.asp> (explaining such allowances generally).

dictates the methodology for recording revenue and expense items for accounting purposes, it does not purport to predict whether the accounting treatment results in a ‘cash benefit’ to the business” warranting a particular ratemaking treatment. *Madigan v. Illinois Commerce Comm’n*, 2015 IL App (1st) 140275 at ¶42. For ratemaking purposes, “[e]ach case depends on the purpose of the asset and the related ADIT.” ComEd Ex. 8.04, 7 (citing prior testimony at 28:574).

AG/City (but not CUB/IIEC) also claim Ms. Brinkman “admitted” that she previously supported the notion of a general offset “accounting principle that Mr. Brosch advocates....” AG/City Br. at 14 (*citing* Tr. at 49:1-21). She did not. Ms. Brinkman testified:

I don't believe you can make a blanket statement like that for all ADITs, because every ADIT is different. All ADITs do not work the same. This ADIT on the direct from last year's testimony [*i.e.*, ADIT related to the reconciliation balance] is a different ADIT than the ADIT on the bad debt that I discuss in this year.

Tr. at 49:11-16. She also directly addressed the inaccurate inference of inconsistency the AG/City brief claims she accepted:

- Q. Mr. Jolly asked you a series of questions about the testimony concerning the ADIT on reconciliation and you indicated that there was no general rule applicable. For clarity, could you please explain how ADIT on reconciliation is different from ADIT on bad debt?
- A. So they are different. The ADIT on the reconciliation is a liability. With the reconciliation and that ADIT, both the revenue and the ADIT have been deferred, so there's no cash that's been collected by customers. There's no source of cash there. With the ADIT on the bad debt, that is an ADIT asset. There is a deduction that ComEd is not allowed to take today as it records a bad debt expense. It can't take that deduction until a future period where that account is written off, so ComEd has effectively prepaid the tax and with that pre-payment should be allowed to recover a carrying cost on that ADIT.

Tr. at 52:2-22. Ms. Brinkman’s testimony reinforces why there is no such general principle and why the proposed reduction in ADIT on bad debt must be rejected.

AG/City also anticipates and tries to respond to the fact that the substance of this claim has already been rejected by the Commission. AG/City Init. Br. at 12-14. Wading through the

fine details of the attempt is unnecessary. AG/City acknowledge that Ms. Brinkman’s testimony concerning the equivalent Cash Working Capital argument in Docket No. 11-0721 follows the Commission’s decision (while they label her testimony “technically consistent,” they point out no respect in which it is not *perfectly* consistent). AG/City then devolve into a discussion of their witness assignments in 2011, a question irrelevant to the Commission’s decision, while ultimately acknowledging that “had his [Mr. Brosch’s] position in Docket No. 11-0721 been adopted, ComEd’s Accumulated Provision for Uncollectibles would have been considered in determining the utility’s rate base, which is exactly the matching of ADIT with the associated asset/liability balances that he is proposing in this case.” *Id.* at 14. The Commission, however, *rejected* Mr. Brosch’s position in Docket No. 11-0721 and the argument AG/City makes now is an attempt to undo that decision, which AG/City tacitly acknowledge by referring to the Commission’s 2011 Order as having “erroneously rejected” their claim. AG/City Init. Br. at 13; *see also id.* at 14 (accepting ComEd’s practice of following that decision would “perpetuate the error made in the prior case”).

Finally, CUB/IIEC argue (CUB/IIEC Init. Br. at 8) that ComEd’s uncollectibles costs are recovered under Rider UF. But, Rider UF only recovers ComEd’s uncollectibles costs themselves. Brinkman Reb., ComEd Ex. 8.0R, 21:442-444, 22:450-471. The costs measured by the ADIT – the prepaid tax – are not recovered through Rider UF, and there is no evidence to the contrary. The fact that those real costs are not recovered through Rider UF only reinforces why this ADIT must be included in rate base.

2. Materials & Supplies

CUB/IIEC baldly state that “the level and growth of the M&S balance should match the level and growth of the distribution plant and maintenance.” CUB/IIEC Init. Br. at 8. Their entire argument in favor of their proposed \$20.7 million rate base disallowance (with a \$4.3

million revenue requirement impact) flows from this unsupported and incorrect belief. *Id.* at 8-12. As articulated in ComEd's Initial Brief, ComEd has offered uncontroverted evidence that this is simply not the case. ComEd Init. Br. at 23-26.

Specifically, Mr. Moy provided evidence that the levels of growth in distribution plant and maintenance on the one hand, and M&S inventory on the other hand, are not generally comparable. He testified that while "increases in distribution plant and maintenance are factors that can lead to increases in M&S levels, they are by no means the only factors." Moy Reb., ComEd Ex. 10.0R, 3:53-55. ComEd also provided evidence that since 2010, other factors that have increased ComEd's M&S inventory include the sheer volume of work to implement EIMA infrastructure and reliability investments, as well as the installation of new equipment not previously installed on ComEd's system. *Id.*, 4:75-80. These factors require ComEd to stock increased volumes of items historically used as well as items not in use prior to 2010, such as AMI meters and their accompanying Network Interface Cards ("NIC"), resilient overhead wire and cable, and distribution automation switches. *Id.*, 4:81-5:108.

CUB/IEEC further miss the mark in claiming that "[n]o company witness has alluded to any delays or other problems in obtaining the necessary materials and supplies to perform increased construction." CUB/IEEC Init. Br. at 11. It is precisely because ComEd has maintained an appropriate M&S balance that it has not faced these difficulties. Indeed, ComEd provided evidence that it is careful to avoid delays in completing work due to difficulty in obtaining supplies. Moy Sur., ComEd Ex. 13.0, 5:78-6:89. CUB/IEEC are also mistaken in their claim that "No ComEd witness testified as to a need for significant lead times between ordering of materials and supplies and placing them into service." CUB/IEEC Init. Br. at 11. ComEd specifically provided evidence that in maintaining an appropriate M&S balance, ComEd must

consider that certain items such as transformers and cable can require up to 16 weeks lead time. Moy Sur., ComEd Ex. 13.0, 6:85-87.

Lastly, CUB/IIEC argue that the M&S balance includes potential double counting. CUB/IIEC Init. Br. at 9-10. This is not correct. As explained by ComEd witness Mr. Moy, the M&S balance reflects the inventory level resulting from the acquisition and installation of facilities and equipment consistent with prudent operational and acquisition practices. Moy Dir., ComEd Ex. 6.0, 15:297-303, 19:373-385. Thus, while facilities and equipment are added to the M&S balance when acquired and ultimately moved to and reflected in plant in service when placed into service, the M&S inventory balance at a given point in time is distinct and separate from plant in service and does not reflect double counting. The fact that EIMA calls for the inclusion of projected plant additions for the filing year in the Initial Rate Year Revenue Requirement does not double count M&S and is fully consistent with EIMA. Section 16-108.5(d)(1) of the PUA refers to using actual data from the most recently available FERC Form 1 and adding “projected plant additions and correspondingly updated depreciation reserve and expense” for the filing year with no reference to a further adjustment for M&S as proposed by CUB/IIEC. 220 ILCS 16-108.5(d)(1).

For the reasons stated here as well as in ComEd’s Initial Brief, this proposed disallowance is patently contrary to the plain language of EIMA, the evidence offered in this case, and Commission practice since the inception of formula rates. The Commission should reject this proposed disallowance.

V. OPERATING EXPENSES

A. Overview

B. Potentially Uncontested Issues

1. Distribution O&M Expenses

- 2. Customer-Related O&M Expenses**
- 3. Uncollectibles Expense**
- 4. Administrative and General Expenses**
- 5. Charitable Contributions**
- 6. Merger Expense**

Despite the AG/City's lengthy treatment of this issue in their Initial Brief (*see* AG/City Init. Br. at 15-21), this issue is moot. If the merger closes by December 1, 2015, no party disputes that the costs to achieve ("CTA") are prudent, reasonable, and recoverable expenses. ComEd Init. Br. at 30. If the merger does not close by December 1, 2015, without waiving any rights to contest other proposed disallowances in this proceeding or any other proceeding, ComEd will voluntarily withdraw its request to recover 2014 Exelon Corporation ("Exelon") / Pepco Holdings, Inc. ("PHI") merger related costs. Tr. at 24:18-25:4 and 27:14-28:7 (Brinkman, Aug. 27, 2015). Despite AG/City's assertion in their Initial Brief, the undisputed evidence does *not* show that the proposed merger costs are not recoverable – it shows only that in the interest of limiting the issues in this case ComEd has not litigated this issue further and it is moot. *Compare* AG/City Init. Br. at 19, fn 16, *with* ComEd Init. Br. at 30.

In addition, AG/City has now requested in their Initial Brief that ComEd and the Commission meet three additional terms, in addition to ComEd's potential withdrawal of these CTA. Although ComEd does not agree with the timing, manner, or merits of this request, in order to further limit the issues in this case and without waiving its right to contest other proposals based on similar arguments in this case, or other proposals based on this or similar arguments in any other proceeding, ComEd: (1) is willing to provide alternative revenue requirements for inclusion in the Commission's order; (2) accepts AG/City's definition of "closed" as the occurrence of all the actions and conditions contemplated in Articles I, II, III, IV,

and VII of the Agreement and Plan of Merger at issue, dated April 29, 2014; and (3) will submit a certification to the Commission by December 2, 2015 stating that the merger has closed, if the merger has closed by December 1, 2015. ComEd cannot, however, commit to filing Exelon's 8K until that document is filed with the United States Securities and Exchange Commission, which may be later than December 2, 2015.

- 7. Charges for Services Provided by BSC**
- 8. Regulatory Commission Expense (Rock Island Clean Line)**
- 9. Depreciation and Amortization Expense**
- 10. Taxes**
- 11. Lobbying Expense**
- 12. Rate Case Expenses**

Although this issue is undisputed, ComEd noticed a discrepancy between Staff's and ComEd's calculation of these expenses. *Compare* Staff Init. Br. at 10 (\$1,326,525 associated with Docket No. 14-0312; \$180,167 associated with various other dockets) *with* ComEd Init. Br. at 33 (\$1,324,585 associated with Docket No. 14-0312; \$179,952 associated with various other dockets). The figures provided in ComEd's Initial Brief are correct and it is ComEd's understanding that Staff will make this adjustment in its Reply Brief. ComEd Init. Br. at 33.

- 13. Corporate Credit Cards (Employee Recognition)**
- 14. Long-Term Incentive Compensation Program Expenses**
 - a. Key Manager Long-Term Performance Plan ("LTPP")**
 - b. Long-Term Performance Cash Awards Program ("LTPCAP")**
- 15. Gross Revenue Conversion Factor**

C. Potentially Contested Issues

- 1. Short-Term Incentive Compensation Program Expenses**

a. Annual Incentive Program (“AIP”)

If the Commission accepts Mr. Bridal’s proposed disallowance of \$10 million in ComEd’s AIP expense, it will disallow prudent and reasonable costs that benefited customers. Mr. Bridal categorically objects to potential AIP payouts above market levels, and particularly AIP payouts of 200%, opining that such payouts are imprudent and unreasonable *per se*. Bridal Dir., Staff Ex. 4.0, 3:50-5:94. Mr. Bridal defines above market as AIP payouts more than 150%. *Id.* It is undisputed, however, that ComEd’s 2014 AIP payout was less than 150%. The payout was 126.1%. Brinkman Reb., ComEd Ex. 8.0R, 8:151-155; Bridal Dir., Staff Ex. 4.0, 4:74-78. The 2014 payout is well below both Mr. Bridal’s theoretical limit of 150% and the plan maximum of 200%.

This straightforward approach does not support a disallowance. Mr. Bridal thus sets forth an argument to disallow the portions of the weighted average of ComEd’s AIP calculation attributable to distinguished performance for each of the eight AIP metrics. Bridal Dir., Staff Ex. 4.0, 4:74-78; Bridal Reb., Staff Ex. 7.0, 3:62-63. In other words, he dissects the balanced scorecard that culminates in ComEd’s total AIP payout – that is undisputedly within market levels – to manufacture a disallowance of \$10 million. Brinkman Dir., ComEd Ex. 1.0 CORR., 20:401-408; Bridal Reb., Staff Ex. 7.0, 4:84-5:94. ComEd has explained at length in its Initial Brief why the Commission should reject this proposal. ComEd Init. Br. at 36-43. In addition, Mr. Bridal’s own example in his testimony looks at the *total AIP payout* – not the calculation per metric – to determine whether the total AIP award is prudent and reasonable. Bridal Reb., Staff Ex. 7.0, 4:81-6:117. The Commission should do the same.

Mr. Bridal also appears to be under the misapprehension that incentive compensation plans must have a “lawful limiter to protect ratepayers,” and that the absence of a limiter in ComEd’s 2015 AIP justifies application of his 150% inter-metric limit. Staff Init. Br. at 12.

First, neither EIMA nor Commission practice require the use of a limiter, or even suggest it is appropriate. Indeed, the customer benefit test codified in EIMA appropriately protects customers. *See* 220 ILCS 5/16-108.5(c)(4)(a). Second, ComEd has shown with undisputed evidence in this case that ComEd employees' distinguished achievement has benefited customers in excess of the cost of the commensurate AIP payout, thus no "protection" is needed. ComEd Init. Br. at 37. The *actual* facts of this case with a 126.1% payout simply do not justify Mr. Bridal's recommendation that is predicated on a *hypothetical* situation where total AIP compensation could reach 200%.

Finally, for the first time in this case, Staff suggests in the alternative that the Commission could limit ComEd's AIP expense to 102.9%. Staff Init. Br. at 13. This would be unlawful. To be sure, the Commission has limited the recoverable amount of ComEd's AIP payout to 102.9% in three previous and unique circumstances. In the first case, that percentage was supported by the facts in the record, as 102.9% was what the payout percentage would have been using ComEd's net income limiter. *Commonwealth Edison Co.*, ICC Docket No. 11-0721, Final Order (May 29, 2012) at 88-90; *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2014 IL App (1st) 122860 at ¶73. In the second case, while the appeal from Docket No. 11-0721 was pending, in order to limit the issues and without waiving its rights in future proceedings, ComEd voluntarily excluded payouts in excess of 102.9%. *Commonwealth Edison Co.*, ICC Docket No. 13-0318, Final Order (Dec. 18, 2013) at 58-59. In the third case, Staff presented testimonial evidence in support of 102.9% as an alternative compromise position resulting from the AG's proposal that 100% of ComEd's AIP be disallowed due to the Shareholder Protection Feature. ComEd accepted the 102.9% alternative compromise position. *Commonwealth Edison Co.*, ICC Docket No. 14-0312, Final Order (Dec. 10, 2014) at 34-45.

A Commission finding of imprudence and unreasonableness must be based on substantial evidence. *Commonwealth Edison Co. v. Illinois Commerce Comm’n*, 405 Ill. App. 3d 389, 398 (2d Dist. 2010). In this case, there is no evidence that supports disallowing ComEd’s AIP expense in excess of 102.9%, and ComEd does not agree to that figure. It is therefore not a viable lawful alternative. The facts in this case support ComEd’s 126.1% payout, there is no appeal pending related to AIP, and ComEd removed the Shareholder Protection Feature that served to limit AIP based on the Commission’s Order in Docket No. 14-0312.

In summary, for the reasons stated in ComEd’s Initial Brief as well as this Reply Brief, the Commission should deny this proposed disallowance and allow full recovery of ComEd’s AIP expense associated with ComEd employees’ distinguished performance. This is the only outcome that is fair and equitable and provides the proper incentive to achieve future customer benefits.

b. Derivative Adjustments

See ComEd’s Init. Br. at 43.

2. Employee Savings Plan

Staff recognizes that Mr. Bridal’s proposed disallowance of \$1,755,000 to remove costs associated with the profit sharing match contributed to the Employee Savings Plan (“ESP”) in 2014 is not supported by EIMA or Commission precedent, which prohibit recovery of *incentive compensation* costs based on earnings per share. Staff Init. Br. at 16; 220 ILCS 5/16-108.5(c)(4)(A). Staff argues that Mr. Bridal’s proposed disallowance is nonetheless appropriate because ComEd’s position is “limited and illogical.” *Id.* Staff contends that the “logical conclusion” of ComEd’s interpretation of the law is that a base salary based entirely on earnings per share would be recoverable while incentive compensation based entirely on earnings per share would not. *Id.*

Of course, none of ComEd's 6,000 employees has a base salary based in any part on earnings per share, let alone based entirely on earning per share. This *unreasonable hypothetical* is not a basis to disallow *prudent and reasonable actual* costs of delivery service. The Commission must decide this issue on the facts of this case and the applicable law, not based on Mr. Bridal's improbable and unsupported hypothetical. *Commonwealth Edison Co.*, 405 Ill. App. 3d 389, 420 (2d Dist. 2010) (disallowances must be supported by substantial evidence).

And although Staff has twice alluded to the existence of some "fundamental reason" why the statutory prohibition on incentive compensation based on earnings per share must also apply to benefit plans, Staff has been unable to articulate that reason. Bridal Reb., Staff Ex. 7.0, 16:313-325; Staff Init. Br. at 16. In truth, there is no such reason. The evidence and the law show that ComEd's ESP expense is a prudent and reasonable cost of delivery service that is not prohibited by Commission practice or EIMA. For the reasons stated in ComEd's Initial Brief as well as this Reply Brief, the Commission should reject Mr. Bridal's proposed disallowance and permit recovery of this expense in its entirety.

3. Outside Services

ComEd has fully addressed Staff's arguments in its Initial Brief. ComEd Init. Br. at 46-49. ComEd further clarifies here that this program is not finished: it will continue to reach customers on an even larger scale as automated metering infrastructure ("AMI") deployment continues. ComEd Init. Br. at 48-49. Thus, contrary to Staff's insinuation, the figure of 36,000 customers reached is not static, it will continue to grow. *Id.*

4. Industry Association Dues

This issue concerns recovery of industry association dues for the Illinois Environmental Regulatory Group ("IERG") and the Utility Solid Waste Activities Group ("USWAG"). ComEd does not dispute that IERG and USWAG engage in some lobbying activities. ComEd Init. Br. at

50. Indeed, when ComEd looked at the very websites that Ms. Jones quotes, it saw merit in a partial exclusion of those amounts and, in the interest of limiting the issues in the case, in its rebuttal testimony ComEd offered a 50% compromise. Newhouse Reb., ComEd Ex. 9.0, 19:395-21:433. Staff rejected this compromise outright and thus ComEd sought and obtained evidence of the exact percentage of IERG and USWAG dues attributable to lobbying activities. Jones Reb., Staff Ex. 6.0R, 3:49-4:66; Newhouse Sur., ComEd Ex. 12.0, 6:120-7:132. This evidence consisted of a statement and a letter from IERG and USWAG, respectively, which ComEd attached to its surrebuttal testimony. Newhouse Sur., ComEd Ex. 12.0, 7:129-132; ComEd Ex. 12.04. No party objected to this evidence and the ALJs admitted the evidence into the record on August 27, 2015. Tr. at 57:11-20.

Rather than addressing the substance of the statement and letter – the uncontroverted evidence at issue – Staff now claims this evidence is “flawed” and should be given zero weight because it believes ComEd should have provided this evidence sooner. Staff Init. Br. at 19. Staff is, in essence, objecting to the *admissibility* of the two documents. *See Anderson v. United Conveyor Supply Co.*, 461 F. Supp. 2d 699 (N.D. Ill. 2006) (inadmissible hearsay given no weight); *Lindsey v. RadioShack Corp.*, 452 F. Supp. 2d 848, 851-852 (2006) (same).

Staff’s objection should have been raised in a pre-trial motion related to surrebuttal testimony or by contemporaneous objection when offered into the record. *See* Tr. at 57:11-15 (where ComEd moved for admission of this evidence and the ALJ asked if there were any objections). “An objection to the admission of evidence, to be available, must be made in apt time, or it will be regarded as waived. The general rule is that the admission of incompetent evidence must be objected to, if at all, at the time of its admission.” *People v. Trefonas*, 9 Ill. 2d 92, 98 (1956). By failing to raise this issue at either of those times Staff has waived this

objection. Indeed, had this objection been timely made, ComEd witness(es) could have explained why they were not previously aware of this information.

In any event, Staff's argument lacks merit. ComEd has explained that it did not have this information available when Ms. Jones first proposed a disallowance. Newhouse Sur., ComEd Ex. 12.0, 7:129-132 (indicating information requested after Staff rejected compromise). The fact that ComEd may or may not have received one of the documents on a previous date is immaterial. Moreover, ComEd should not be penalized for attempting to compromise (to its financial detriment, as a 50% disallowance would have been higher than the 6% actually attributable to non-recoverable activities) before expending resources to track down detailed evidentiary support for \$49,000 in costs.

Furthermore, contrary to Staff's statement that ComEd has not rebutted Ms. Jones summary of the IERG and USWAG websites (Staff Init. Br. at 20), these documents do exactly that. As ComEd explained in testimony and briefing, these documents are the type of evidence that companies routinely rely on in preparing their books and tax filings. Newhouse Sur., ComEd Ex. 12.0, 8:150-152; ComEd Init. Br. at 50. Websites are not. The Commission should therefore reject Ms. Jones' proposed 100% disallowance and instead adopt ComEd's proposed \$4,000 disallowance as reflected in ComEd Ex. 12.03.

VI. RATE OF RETURN

A. Overview

B. Capital Structure

C. Cost of Capital Components

- 1. Rate of Return on Common Equity**
- 2. Cost of Long-Term Debt**
- 3. Cost of Short-Term Debt**

4. Overall Weighted Cost of Capital

VII. RECONCILIATION

A. Overview

B. Potentially Contested Issues

1. Calculation of Interest on Reconciliation Balance (ADIT Related to Reconciliation)

VIII. REVENUES

IX. COST OF SERVICE AND RATE DESIGN

X. OTHER

A. Wages and Salaries Allocator Utilized in Rider PE and Rate BESH

B. Reporting Requirements

1. EIMA Investments

2. Reconciliation Year Plant Additions

3. Contributions to Low-Income Assistance and Support Programs

XI. CONCLUSION

Based on the record and the arguments made herein, the Commission should approve ComEd's proposed 2016 Rate Year Net Revenue Requirement as presented in ComEd's surrebuttal testimony (including ComEd's acceptances of proposals of others, whether to narrow the issues or otherwise), approve the original costs of ComEd's electric plant in service as of December 31, 2014, make the required factual findings in support thereof, and authorize and direct ComEd to make a compliance filing implementing the resulting rates and charges.

Dated: September 16, 2015

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

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